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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/542,030

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EXAMINER

ANDERSON, GREGORY A

ART UNIT

PAPER NUMBER

3773

MAIL DATE

DELIVERY MODE

12/05/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/542,030

Applicant(s)BARKER, STEPHEN GEORGE
EDWARD**Examiner**

GREGORY A. ANDERSON

Art Unit

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-35,39-41 and 43-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-35,39-41 and 43-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 23, 24, 26, 27, 29, 32, 35, 39, and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Kammerer et al. 5,397,332.

Regarding claim 23: Kammerer et al. discloses an applicator assembly comprising: a laparoscopic port 100, a deployment sleeve 102 for passing down the laparoscopic port, a plunger 106 for location within the sleeve to extend from a proximal to a distal end thereof, a sheet of surgical material 65 which can be folded, or collapsed, for location at and fully within the distal end of the deployment sleeve, and an actuating means 60 to unfold or erect the sheet of surgical material following expulsion of the sheet of surgical material from the distal end of the deployment sleeve as a result of longitudinal movement of the plunger within the deployment sleeve, wherein the deployment sleeve is provided with an external flange 122 defining an insertion stop for the deployment sleeve in the laparoscopic port to control the length of insertion of the sleeve in the port.

Regarding claim 24: Kammerer et al. further discloses a pulling means 200 operative to apply a pull force to the sheet of surgical material following deployment.

Regarding claim 26: Kammerer et al. further discloses the sheet of surgical material, in use, is encased and protected within the deployment sleeve during the manipulation procedure to position the sleeve at the termination of the opening after which the sheet of surgical material is expelled by the plunger to be erected to close behind and over the internal area of the opening (Figs. 5-6).

Regarding claim 27: Kammerer et al. further discloses the sheet of surgical material comprises a surgically compatible mesh 65.

Regarding claim 29: Kammerer et al. further discloses the sheet of surgical material being a flat flexible sheet (Fig. 23) and includes radial ribs 62 forming more rigid but resilient arms through which, when the sheet of surgical material is forced to a collapsed or folded configuration, the sheet of surgical material is caused to open out to restore the flat form (Fig. 26).

Regarding claim 32: Kammerer et al. further discloses the sheet of surgical material including ribs which have preformed fold creases to facilitate collapse to a predetermined configuration (Fig. 7).

Regarding claim 35: Kammerer et al. further discloses the plunger being provided with a flange (Fig. 7) to control the position of the plunger within the sleeve.

Regarding claim 39: Kammerer et al. further discloses the sleeve being dimensioned to pass down the port.

Regarding claim 43: Kammerer et al. further discloses the surgically compatible mesh comprises polypropylene (Col. 12 ll. 14-16).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 23-25, 28, 30, 31, 33, 34, 41, 44, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Himpens et al. 5,397,331 in view of Kammerer et al..

Himpens et al. discloses an applicator assembly comprising; a deployment sleeve 23; a plunger 20; a sheet of surgical material 13 which can be folded, or collapsed; and an actuating means 14 operative to unfold or erect the sheet following expulsion from the distal end of the deployment sleeve through longitudinal movement of the plunger. Himpens et al. further disclose a pulling means 19 operative to apply a pull force to the sheet following deployment. Himpens et al. further discloses the pulling means being a suture 19. Himpens et al. further discloses the entire sheet is wholly of PTFE (Col. 5 ll. 2-4). Himpens et al. further discloses the opening being effected through the properties of the sheet material itself (Col. 5 ll. 4-13). Himpens et al. further discloses the opening being effected or assisted through a suture which pulls the sheet upward towards the applicator (Figs. 6-9). Himpens et al. further discloses the sheet including ribs 14 which have a "memory" acting to restore the sheet to a flat form. Himpens et al. further discloses, in use, after deployment of the sheet the opening thereof is effected or assisted by a separate actuating means which may comprise a suture needle, with or without an attached suture, extending through the plunger from

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the proximal to the distal end of the sleeve and connecting with the sheet, the suture being arranged so that a pulling force applied thereto opens the sheet (Figs. 8-9).

Himpens et al. further discloses instruments for use in the laparoscopic surgery 12, 13, 23. Himpens et al. further discloses the sheet of surgical material comprising a non-stick material on an innermost surface adjacent the applicator (since the Himpens device can be made from PTFE it will inherently inhibit adhesion). Himpens et al. further discloses the sheet of surgical material being circular (Fig. 2).

However, Himpens et al. does not disclose a laparoscopic port and an external flange defining an insertion stop for the deployment sleeve in the laparoscopic port to control the length of insertion of the deployment sleeve in the laparoscopic port.

Kammerer et al. discloses a laparoscopic port 100 and an external flange 122 defining an insertion stop for the deployment sleeve in the laparoscopic port to control the length of insertion of the deployment sleeve in the laparoscopic port.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the device of Himpens et al. with the port and flange of Kammerer et al. in order to facilitate the repeated insertion and removal of the device.

5. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kammerer et al. in view of optimization of ranges.

Kammerer et al. discloses the invention as discussed in claim 39 above.

However, Kammerer et al. does not disclose the laparoscopic port having a nominal diameter of 5 to 10 mm.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the device of Kammerer et al. to find the nominal workable range since it has been held that where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Response to Arguments

6. Applicant's arguments with respect to claims 23-35, 39-41, and 43-45 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to GREGORY A. ANDERSON whose telephone number is (571)270-3083. The examiner can normally be reached on Mon-Thurs 9:30am-3:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory A Anderson/

/(Jackie) Tan-Uyen T. Ho/
Supervisory Patent Examiner, Art Unit 3773